

FILED

JUL 27 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ANGEL NIEVES-MARTINEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

Nos. 04-73842

05-70592

Agency No. A34-342-046

MEMORANDUM*

On Petition for Review of Orders of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

In these consolidated petitions, Angel Nieves-Martinez, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”) summarily affirming without opinion an immigration judge’s removal order (No. 04-73842), as well as the BIA’s subsequent order denying his motion to

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reopen (No. 05-70592). We have jurisdiction pursuant to 8 U.S.C. § 1252, *Parrilla v. Gonzales*, 414 F.3d 1038, 1040 (9th Cir. 2005), and deny the petitions for review.

Reviewing de novo, *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005), we conclude that despite Nieves-Martinez’s 2004 sentencing adjustment, his conviction for violating California Penal Code § 288(a) remains an aggravated felony for which he is removable. *See United States v. Baron-Medina*, 187 F.3d 1144, 1147 (9th Cir. 1999) (“[A] conviction under Section 288(a) constitutes a conviction for ‘sexual abuse of a minor’ within the meaning of 8 U.S.C. § 1101(a)(43)(A).”); *cf. Ramirez-Castro v. INS*, 287 F.3d 1172, 1175 (9th Cir. 2002) (applying “the general rule that convictions expunged under state law retain their immigration consequences”).

Nieves-Martinez’s contention that his due process rights were violated by the BIA’s decisions is unpersuasive. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (“To prevail on a due process challenge . . . [a petitioner] must show error and substantial prejudice.”).

PETITIONS FOR REVIEW DENIED.